IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 32255 of 2006(M)

TA.397/1998 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

K.T.LAWRENCE, S/O. THOMAS,
KALATHIPARAMBIL HOUSE, CHIRAKKADAVU,
VARAPPUZHA, ERNAKULAM DISTRICT.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS:
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1. THE FEDERAL BANK LTD.,
EDAVANAKKADU BRANCH, REPRESENTED BY
ITS MANAGER.

2. THE DEBT RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL, ERNAKULAM.

3. E.K.ANTONY, S/O. LATE KOCHAPPU,
44/1284 (OLD NO.44/2095), 'POPS' LFC ROAD,
KALOOR, ERNAKULAM.

BY ADV. SRI.PETER THARAKAN
SRI.P.B.SURESH KUMAR
SRI.LEO GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 32255/2006

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE LETTER DTD.14.9.06.

P2. COPY OF THE -DO- 25.9.06.

P3. COPY OF THE PETITION DTD.27.9.06.

P4. COPY OF THE AFFIDAVITDTD.27.9.06.

P5. COPY OF THE OBJECTION FILED BY R1.

P6. COPY OF THE PETITION DTD.10.11.2006.

P7. COPY OF THE AFFIDAVIT DTD.10.11.2006.

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.32255 of 2006

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Dated this the 27th day of February, 2007

J U D G M E N T

The petitioner is a defaulter in payment of amounts due to the 1st respondent bank. The 1st respondent approached the Debts Recovery Tribunal (DRT), pursuant to which, decree for realisation of the money was passed by the DRT. DRT issued recovery certificate to the recovery officer and the recovery officer sold the mortgaged property in auction, which was purchased by the third respondent. Thereafter, the petitioner remitted the entire amount due to the bank as evidenced by Ext.P2 and filed Ext.P3 petition for setting aside the sale as provided under Rule 60 of schedule II of the Income Tax Act, which is applicable to proceedings for sale before the recovery officer of the DRT. Since the recovery officer refused to acknowledge payment made by the petitioner to the

bank as a payment contemplated under the Rules in Schedule II to the Income Tax Act, the petitioner has approached this court with this writ petition for the following reliefs:

> "i. Issue s writ of mandamus or other appropriate writ direction or order directing the 2nd respondent to record satisfaction of the recovery and set aside the sale.
>
> ii. Issue a writ of mandamus or other appropriate writ direction or order directing the 2nd respondent to treat the payment made to the bank as a payment made in terms of Rule 60, Schedule II of the Income Tax Act."

2. I have heard the learned counsel for the petitioner, the 1st respondent and the third respondent.

3. The third respondent would submit that he having participated in the proceedings complying with the procedure prescribed under law, he cannot now be divested of the property. The 1st respondent would submit that they are satisfied with the payment of the loan amount by the petitioner. In such circumstances, I do not think that it is in the interest of justice to deprive the petitioner of his property. At the same time, the third

respondent cannot be asked to suffer because of the default on the part of the petitioner. The third respondent has parted with his money for which he has to be adequately compensated. In the above circumstances, I dispose of this writ petition as follows:

The sale effected by the 2nd respondent-recovery officer of the DRT would stand set aside if the petitioner pays 9 per cent interest on the amounts deposited by the third respondent before the recovery officer along with five per cent penalty as per law, to the third respondent, within two weeks from today. On the petitioner depositing 9 per cent interest and 5 per cent penalty before the recovery officer, the recovery officer shall return the amounts deposited by the third respondent together with the interest and penalty to the third respondent, within one week from the date of deposit by the petitioner. If the petitioner fails to deposit the amounts as directed above, he will not be entitled to the benefit of this judgment and

the sale would stand confirmed in the name of the third respondent and the 2nd respondent recovery officer shall proceed further accordingly. The poundage deposited by the third respondent shall also be returned by the recovery officer to the third respondent along with other amounts.

Writ petition is disposed of as above.

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